



# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA

Vol. 592

Pretoria, 31 October 2014  
Oktober 2014

**No. 38145**

*N.B. The Government Printing Works will  
not be held responsible for the quality of  
"Hard Copies" or "Electronic Files"  
submitted for publication purposes*



**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

**IMPORTANT NOTICE**

The Government Printing Works will not be held responsible for faxed documents not received due to errors on the fax machine or faxes received which are unclear or incomplete. Please be advised that an "OK" slip, received from a fax machine, will not be accepted as proof that documents were received by the GPW for printing. If documents are faxed to the GPW it will be the sender's responsibility to phone and confirm that the documents were received in good order.

Furthermore the Government Printing Works will also not be held responsible for cancellations and amendments which have not been done on original documents received from clients.

---

**CONTENTS • INHOUD**

No.

Page  
No.      Gazette  
            No.**GENERAL NOTICE****Environmental Affairs, Department of***General Notice*

940	National Environmental Management Act (107/1998): Regulations pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, exploration, mining or production operations .....	3	38145
-----	---	---	-------

---

---

## GOVERNMENT NOTICE

---

### DEPARTMENT OF ENVIRONMENTAL AFFAIRS

No. 940

31 October 2014

#### NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998)

#### REGULATIONS PERTAINING TO THE FINANCIAL PROVISION FOR THE REHABILITATION, CLOSURE AND POST CLOSURE OF PROSPECTING, EXPLORATION, MINING OR PRODUCTION OPERATIONS

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby give notice of my intention to make regulations pertaining to the financial provision for the rehabilitation, closure and post closure of prospecting, exploration, mining or production operations, under section 44(aG), (aH) read with sections 24(5)(b)(ix), 24P and 24R of the National Environmental Management Act, 1998 (Act No.107 of 1998) in the Schedule hereto.

Members of the public are invited to submit to the Minister, within 30 days after the publication of the notice in the Gazette, written comments or inputs to the following addresses:

**By post to:** The Director-General: Department of Environmental Affairs  
Attention: Ms Sujata Dasarath  
Private Bag X447  
Pretoria  
0001

**By hand at:** Ground Floor (Reception), Environment House, 473 Steve Biko Street,  
Arcadia, Pretoria, 0083.

**By e-mail:** [SDasarath@environment.gov.za](mailto:SDasarath@environment.gov.za) or by fax to: (012) 399 3620.

Any inquiries in connection with the notice can be directed to Mr Simon Moganetsi at (012) 399 9309.

**COMMENTS RECEIVED AFTER THE CLOSING DATE WILL NOT BE CONSIDERED.**

**BOMO EDITH EDNA MOLEWA  
MINISTER OF ENVIRONMENTAL AFFAIRS**

**SCHEDULE****TABLE OF CONTENTS****CHAPTER 1****DEFINITIONS AND PURPOSE OF THE REGULATIONS**

1. Definitions
2. Purpose of Regulations
3. Application of Regulations

**CHAPTER 2****FINANCIAL PROVISION**

4. Determination of financial provision
5. Scope of financial provision
6. Method for determining the costs of the financial provision
7. Availability of the financial provision
8. Payment method
9. Assessment, review and adjustment of financial provision
10. Preparation and implementation of plans

**CHAPTER 3****GENERAL MATTERS**

11. Deemed closure
12. Care and maintenance
13. Approval of plans by the Minister responsible for mineral resources
14. Transitional arrangements
15. Offences
16. Penalties
17. Short title and commencement

Appendix 1: Deed of trust

Appendix 2: Financial guarantee

Appendix 3: Minimum content of an annual rehabilitation plan

- Appendix 4: Minimum content of a final rehabilitation, decommissioning and mine closure plan
- Appendix 5: Minimum content of an environmental risk assessment
- Appendix 6: Care and maintenance plan

## CHAPTER 1

### DEFINITIONS AND PURPOSE OF THE REGULATIONS

#### Definitions

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned, unless the context otherwise indicates—

**“auditor”** means a suitably qualified person with requisite experience registered with the Independent Regulatory Board of Auditors;

**“decommissioning and closure plan”** means a plan contemplated in regulation 10(2) of these Regulations;

**“care and maintenance plan”** means a plan contemplated in regulation 12(3) of these Regulations;

**“closure certificate”** has meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**“effective date”** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**“environmental risk assessment”** means an assessment contemplated in regulation 10(3) of these Regulations;

**“financial provision”** has the meaning assigned to it in section 1 of the Act;

**“financial provision determination”** means the calculation of the cost of the rehabilitation, closure and ongoing post decommissioning management of negative environmental impacts contemplated in regulation 6 of these Regulations;

**“holder”** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**“independent”** has the meaning assigned to it in regulation 1 of the Environmental Impact Assessment Regulations;

**“mining operation”** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**“Mineral and Petroleum Resources Development Act, 2002”** means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

**“Mineral and Petroleum Resources Development Regulations, 2004”** as contemplated in the transitional arrangements means the Mineral and Petroleum Resources Development Regulations published in terms of section 107(1) of the Mineral and Petroleum Resources Development Act, 2002 under Government Notice R527 in *Government Gazette* 26275 of 23 April 2004 and as amended by Government Notice R1288 in *Government Gazette* 26942 of 29 October 2004 and Government Notice R1203 in *Government Gazette* 29431 of 30 November 2006;

**“permit holder”** means a person issued with a mining permit in terms of section 27 of the Mineral and Petroleum Resources Development Act, 2002;

**“prospecting operations”** has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002;

**“specialist”** means a person that is generally recognised within the scientific community as having the capability of undertaking, in conformance with generally recognised scientific principles, specialist studies or preparing specialist reports;

**“annual rehabilitation plan”** means a plan contemplated in regulation 10(1) of these Regulations;

**“the Act”** means the National Environmental Management Act, 1998 (Act No. 107 of 1998).

### **Purpose of Regulations**

2. The purpose of these Regulations is to regulate the method for determining and making financial provision for the costs associated with the management of environmental impacts from prospecting, exploration, mining or production operations through the life of mine and that may become known in the future.

### **Application of Regulations**

3. These Regulations applies to a holder under the Mineral and Petroleum Resources Development Act, 2002.

## **CHAPTER 2**

### **FINANCIAL PROVISION**

#### **Determination of financial provision**

4. A holder must determine and make financial provision for the rehabilitation and management of negative environmental impacts from prospecting, exploration, mining or production operations to the satisfaction of the Minister responsible for mineral resources.

#### **Scope of financial provision**

5. A holder must make financial provision for—
  - (a) rehabilitation;

- (b) decommissioning and closure activities at the end of the life of mine; and
- (c) remediation and management of latent or residual environmental impacts which may become known in the future, including the pumping and treatment of polluted or extraneous water.

#### **Method for determining the costs of the financial provision**

6. (1) A holder must determine the financial provision through a detailed itemisation of all activities and costs required for—
- (a) annual rehabilitation;
  - (b) final rehabilitation, decommissioning and closure of the prospecting, exploration, mining or production operations at the end of the life of mine; and
  - (c) remediation of latent or residual environmental impacts which may become known in the future, including the pumping and treatment of polluted or extraneous water.
- (2) The determination of financial provision contemplated in sub-regulation (1) must be calculated based on the actual costs of implementing the annual rehabilitation plan, the final rehabilitation, decommissioning and mine closure plan, and the environmental risk assessment report contemplated in regulation 10(1), (2) and (3) of these Regulations and must be contained in the respective plans and assessment report.
- (3) The sum and calculations of the financial provision contemplated in sub-regulation (1) must be included in the environmental management programme submitted in terms of section 24N of the Act.

#### **Availability of the financial provision**

7. The amount in the financial provision must, at all times, be equal to the sum of the financial provision calculated in terms of regulation 6(2), reviewed and adjusted in terms of regulation 9 of these Regulations and approved by the Minister responsible for mineral resources annually.

#### **Payment method**

8. (1) A holder must provide a financial provision by one or a combination of the following payment methods:
- (a) a contribution to a trust fund established in terms of applicable legislation; or
  - (b) a financial guarantee from a bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990) or from a financial institution registered by the Financial Services Board.
- (2) A permit holder must provide a financial provision by one or a combination of the following methods:
- (a) a contribution to a trust fund established in terms of applicable legislation; or

- (b) a financial guarantee from a bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990) or from a financial institution registered by the Financial Services Board; or
  - (c) a deposit into an account specified by the Minister responsible for mineral resources.
- (3) The trust fund contemplated in sub-regulations (1)(a) and (2)(a) must be established by a deed of trust in the format set out in Appendix 1 to these Regulations.
- (4) The financial guarantee contemplated in sub-regulations (1)(b) and (2)(b) must be in the format set out in Appendix 2 to these Regulations.
- (5) Where a permit holder make use of the payment method contemplated in sub-regulation (2)(c) any interest earned on the deposit accrues to the Minister responsible for mineral resources for the management and auditing of the account or any other activity related to environmental management and protection.
- (6) Proof of payment or arrangements of the financial provision being in place as contemplated in sub-regulations (1) and (2) must be submitted to and approved by the Minister responsible for mineral resources prior to the approval of the environmental management programme and before the issuing of the environmental authorisation.
- (7) The proof of payment or arrangements of the financial provision contemplated in sub-regulation (6) must be accompanied by a verification of registration of the financial institution contemplated in sub-regulations (1)(b) and (2)(b).
- (8) The proof of payment must identify the manner in which the financial provision will be apportioned including the contribution into a trust fund contemplated in sub-regulation (1)(a) or a financial guarantee contemplated in sub-regulation (1)(b) or a combination of the two, or a trust fund contemplated in sub-regulation (2)(a) or financial guarantee contemplated in sub-regulation (2)(b) or a cash deposit contemplated in sub-regulation (2)(c), or combination of the appropriate payment methods.

#### **Assessment, review and adjustment of financial provision**

- 9. (1) Every holder must assess the adequacy of the sum of the financial provision as determined in terms of regulation 6 of these Regulations and approved by the Minister responsible for mineral resources within one year of the effective date of the prospecting right, exploration right, mining permit, mining right or production right, and annually thereafter.
- (2) The annual assessment contemplated in sub-regulation (1) must be undertaken by reviewing:
  - (a) the annual rehabilitation plan,
  - (b) the final rehabilitation, decommissioning and mine closure plan; and
  - (c) the environmental risk assessment report.



- (3) The review contemplated in sub-regulation (2) must be undertaken by a specialist review team which must include a mining engineer, a surveyor and an environmental assessment practitioner.
- (4) On the basis of the review undertaken in sub-regulation (2) the specialist review team must assess the adequacy of the sum of the financial provision and identify any adjustments that need to be made.
- (5) The results of the review contemplated in sub-regulation (2) and the assessment of the adequacy of the sum of the financial provision contemplated in sub-regulation (4), including any adjustment, must be audited by an independent auditor and must be submitted for approval to the Minister responsible for mineral resources in the form of an auditor's report within 15 months of the effective date of the prospecting right, exploration right, mining permit, mining right or production right.
- (6) If the Minister responsible for mineral resources is not satisfied with the assessment of the adequacy and the adjustment of the sum of the financial provision contemplated in sub-regulation (1) or regulation 11(7) of these Regulations, the Minister responsible for mineral resources may—
  - (a) request the holder, at its own cost, to revise the assessment and the adjustment of the sum of the financial provision to the satisfaction of the Minister responsible for mineral resources;
  - (b) request the holder, at its own cost, to have the review and the adjustment of the sum of the financial provision peer reviewed by another independent qualified auditor team which must include a mining engineer and an environmental assessment practitioner; or
  - (c) appoint another independent qualified auditor team which must include a mining engineer and an environmental assessment practitioner, at the holder's cost, to confirm the assessment and the adjustment of the sum of the financial provision in consultation with the holder.
- (7) The cost referred to in sub-regulation (6) is those of the holder and must be considered as a supplementary cost as this cost may not be reserved from the financial provision.
- (8) If the holder cannot submit the assessment findings and auditor's report within the period stipulated in sub-regulation (5), such a holder must show good cause, in a detailed explanation of the reasons for the lateness, to the Minister responsible for mineral resources for an extension to be granted.
- (9) The extension of the time period contemplated in sub-regulation (8) may be extended for a maximum period of three months.
- (10) No further extension may be allowed after the lapse of the three months contemplated in sub-regulation (9).
- (11) The holder must increase the financial provision, should the review, assessment and audit of the adequacy of the financial provision contemplated in sub-regulation (4) identify a shortfall in the financial provision, to meet the assessed and audited sum of

the financial provision within 30 days from the date of signature on the final auditor's report.

- (12) The holder must increase the financial provision within 30 days of being informed of the shortfall, should the Minister responsible for mineral resources require a further adjustment based on the review, assessment and independent auditor's report contemplated in sub-regulation (6), to meet the required sum of the financial provision and provide proof of payment to the Minister responsible for mineral resources.
- (13) Should the review, assessment and independent auditor's report contemplated in sub-regulation (6) indicate an overpayment, the amount overpaid must be deferred against subsequent assessments.
- (14) The holder must provide a certificate signed by the holder's independent auditor reconciling the sum of the financial provision contemplated in regulation 6 of these Regulations and any update thereof and estimates of exposure and liabilities with regard to environmental rehabilitation disclosed in the financial statement of the holder to the Minister responsible for mineral resources.
- (15) The financial statement contemplated in sub-regulation (14) must include contingent liabilities and restricted cash associated with the financial provision liability.
- (16) The financial provision liability associated with mine closure or latent or residual environmental impacts may not be deferred against assets at mine closure or mine infrastructure salvage value.
- (17) In the event that the bank or the financial institution intends to withdraw the financial guarantee to support the financial provision, the bank or financial institution must communicate such a notice of withdrawal to the Minister responsible for mineral resources and the Minister in accordance with any of the communication methods set out in section 47D of the Act.
- (18) Where such a notice of withdrawal is communicated to the Minister responsible for mineral resources and the Minister, the Minister responsible for mineral resources must within seven days of receiving the notice of withdrawal, contact the holder informing the holder to provide an alternative arrangement for the financial provision within 14 days of receipt of the communication.
- (19) Should the holder fail to provide the Minister responsible for mineral resources with alternative arrangement within 14 days contemplated in sub-regulation (18), the Minister responsible for mineral resources must call on the financial guarantee and deposit it into a bank account set up by the Minister responsible for mineral resources until an alternative arrangement can be made by the holder.
- (20) The Minister responsible for mineral resources must release the financial guarantee to the bank or the financial institution within seven days of receipt of the confirmation that the bank or the financial institution has disbursed the funds into the bank account contemplated in sub-regulation (19).

- (21) The annual review of the financial provision required in terms of sub-regulation (1) including a copy of the independent auditor's reports and proof of the adjustment made to the trust funds, bank guarantee, or in the case of a permit holder the banking account as specified by the Minister responsible for mineral resources, must be included in the audit of the environmental management programme required in terms of the Environmental Impact Assessment Regulations.
- (22) If after the assessment of the adequacy of the sum of the financial provision contemplated in regulation 9(5) of these Regulations the holder is not be able to increase the sum of the assessed and audited financial provision to cover an identified shortfall, the Minister responsible for mineral resources may enter into a payment agreement with the holder for a period not exceeding five years to bring the sum of the financial provision in line with the assessed and audited sum of the financial provision.
- (23) The Minister responsible for mineral resources may request any information that may be relevant to the decision on the payment agreement contemplated in sub-regulation (22) from the holder.
- (24) The payment agreement contemplated in sub-regulation (22) must be together with the plans contemplated in regulation 10(1), (2) and (3) of these Regulations, and submitted as part of the environmental management programme required in terms of Section 24N of the Act as contemplated in regulation 10(4) of these Regulations, and the compliance to meeting the terms of payment must also be included in the annual audit to the plans as required in terms of regulation 10(6) of these Regulations.

#### **Preparation and implementation of plans**

- 10. (1) The annual rehabilitation plan must contain all information set out in Appendix 3 to these Regulations.
- (2) The final rehabilitation, decommissioning and mine closure plan must contain all information set out in Appendix 4 to these Regulations.
- (3) The environmental risk assessment must contain all information set out in Appendix 5 to these Regulations.
- (4) The holder must submit the plans contemplated in sub-regulations (1), (2) and (3) as part of the environmental management programme required in terms of Section 24N of the Act.
- (5) The plans submitted as part of the environmental management programme contemplated in sub-regulation (4) must be audited annually and updated in relation to the audit findings.
- (6) All documentation submitted to the Minister of mineral resources must be signed off by an independent auditor and the company Chief Executive Officer or the General Manager where the mine is not a company.
- (7) The approved environmental management programme submitted in terms of section 24N of the Act and any amendment thereof required in terms of the Environmental Impact Assessment Regulations must be—

- (a) made available to the public on the website of the holder undertaking the mining operation;
  - (b) available at the site office of the mining operation; or
  - (c) made accessible to the public on request.
- (8) The company Chief Executive Officer or the General Manager where the mine is not a company is responsible for implementing the approved annual rehabilitation plan.
- (9) The company Chief Executive Officer or the General Manager where the mine is not a company must ensure that an approved decommissioning and mine closure plan is in place before submitting an application for closure certificate in terms of Section 43 of the Mineral and Petroleum Resources Development Act, 2002.
- (10) If a holder is placed under liquidation and business has ceased, in terms of applicable legislation, before the submission of an application for closure certificate in terms of Section 43 of the Mineral and Petroleum Resources Development Act, 2002, the Minister responsible for mineral resources may implement the decommissioning and closure plan approved for that holder using the financial provision or such portion of the financial provision as required to execute the final rehabilitation, decommissioning and mine closure plan, retained for such holder, in terms of Section 24R of the Act.
- (11) The Minister responsible for mineral resources must notify the holder 10 days prior to taking the action contemplated in sub-regulation (10).

### **CHAPTER 3**

#### **GENERAL MATTERS**

##### **Care and Maintenance**

- 11. (1) A holder may apply, at any time, to be placed under care and maintenance, on an application form provided by the Minister responsible for mineral resources, to the Minister responsible for mineral resources.
- (2) An application contemplated in sub-regulation (1) must be submitted to the Minister responsible for mineral resources for consideration and must include—
  - (a) a detailed explanation of the merits to be placed under care and maintenance by the holder; and
  - (b) a care and maintenance plan for approval by the Minister responsible for mineral resources.
- (3) The care and maintenance plan must contain all information set out in Appendix 6 to these Regulations.
- (4) A holder may be placed under care and maintenance for a period not exceeding five years, thereafter an application for mine closure accompanied by a decommissioning and closure plan, contemplated in section 43 of the Mineral and Petroleum Resources

Development Act, 2002 must be submitted to the Minister responsible for mineral resources.

- (5) A care and maintenance plan must be audited and updated annually, in relation to the audit findings and the audited and updated care and maintenance plan must be submitted for approval to the Minister responsible for mineral resources.
- (6) The financial provision must be maintained throughout the period of care and maintenance.
- (7) The financial provision must be assessed, reviewed and adjusted in accordance with regulation 9 of these Regulations.
- (8) No holder may operate under care and maintenance without an approval from the Minister responsible for mineral resources in terms of these Regulations.

#### **Deemed closure**

12. (1) A holder is deemed to be going through closure if—

- (a) the average production for the calendar year under consideration decreases by more than 60% from the previous calendar year calculated on the last day of the current year; or
  - (b) the work force is reduced by 90% as compared to the previous calendar year calculated on the last day of the current year, or
  - (c) the processing facilities and equipment are decommissioned or taken down, pipelines are drained, equipment parts are cleaned and sold, buildings are repurposed or demolished, warehouse materials are recovered and waste is disposed of; or
  - (d) a care and maintenance plan has been in place for five years.
- (2) In a case where the holder is experiencing any of the matters set out in sub-regulation (1), the Minister responsible for mineral resources may deem such an operation to be going through closure and must notify the holder accordingly.
- (3) The holder, after notification by the Minister responsible for mineral resources as contemplated in sub-regulation (2), must within 90 days either—
- (a) submit for approval to the Minister responsible for mineral resources—
    - (i) an environmental risk assessment and decommissioning and closure plan; or
    - (ii) a care and maintenance plan; or
  - (b) object to the notification and submit in writing a detailed explanation of the merits against deemed closure.

- (4) After receiving the plans contemplated in sub-regulation (3)(a), the Minister responsible for mineral resources may—
  - (a) approve the plans for implementation by the holder; or
  - (b) request additional information before approval for implementation by the holder.
- (5) The Minister responsible for mineral resources, after receiving an objection contemplated in sub-regulation (3)(b), may confirm or cancel the notification issued in terms of sub-regulation (2).
- (6) In a case where the Minister responsible for mineral resources confirms the notification issued in terms of sub-regulation (2) the holder must be provided with written reasons.
- (7) The holder must implement the approved plan contemplated in sub-regulation (3)(a) within 90 days after the approval contemplated in sub-regulation (4)(a) or confirmation of the notification contemplated in sub-regulation (6).

#### **Approval of plans by the Minister responsible for mineral resources**

- 13. (1) The Minister responsible for mineral resources must acknowledge receipt of all plans submitted in terms of regulations 10(4), 11(2) and (5) of these Regulations within seven days of receipt thereof.
- (2) The Minister responsible for mineral resources must assess any plan, audit report or financial provision submitted in terms of regulations 10(4), 11(2) and (5) of these Regulations, and must approve or reject such a plan, audit report or financial provision within 30 days of receipt thereof.
- (3) Where a plan is rejected, the Minister responsible for mineral resources must provide reasons for the rejection and indicate a timeframe, not exceeding 30 days, within which a revised plan must be resubmitted for approval.
- (4) Upon receipt of the revised plan, the Minister responsible for mineral resources must reconsider the revised plan in accordance with sub-regulation (2).

#### **Transitional arrangements**

- 14. (1) Anything done in terms of regulations 53 and 54 relating to financial provision in the Mineral and Petroleum Resources Development Regulations, 2004 which can be done in terms of a provision of these Regulations must be regarded as having been done in terms of the provision of these Regulations.
- (2) An existing financial provision approved in terms of the Mineral and Petroleum Resources Development Regulations, 2004 must be regarded to be the sum of the financial provision approved in terms of these Regulations.
- (3) Existing financial provisions approved in terms of the Mineral and Petroleum Resources Development Regulations, 2004 are subject to the provision of these Regulations.

- (4) A holder that operates in terms of an approved financial provision at the time of the coming into operation of these Regulations must review and align the approved financial provision with the provisions of these Regulations, and this alignment must take place after the coming into operation of these Regulations as set out in sub-regulations (5) to (10).
- (5) A holder must, within 15 months after the coming into operation of these Regulations, assess, review and adjust the sum of the financial provision in accordance with regulation 9 of these Regulations, and submit a revised sum of the financial provision for approval by the Minister responsible for mineral resources.
- (6) If a holder fails to comply with sub-regulation (5), the existing approved financial provision shall lapse after 45 calendar days from the date after the lapsing of the 15 months period referred to in sub-regulation (5) and the holder must comply with the provisions of these Regulations.
- (7) On receipt of the revised financial provision contemplated in sub-regulation (5), the Minister responsible for mineral resources must, within 30 calendar days, consider the revised financial provision and—
  - (a) approve the revised financial provision for implementation by the holder;
  - (b) refer the revised financial provision back to the holder for further revision; or
  - (c) not approve the revised financial provision.
- (8) The holder must implement the approved revised financial provision contemplated in sub-regulation (7)(a) within 30 calendar days after the date of approval.
- (9) If the revised financial provision is referred back as contemplated in sub-regulation (7)(b), the holder must assess, review and adjust the revised financial provision as directed by the Minister responsible for mineral resources and re-submit within 30 calendar days for further consideration and approval by the Minister responsible for mineral resources.
- (10) On receipt of the revised financial provision contemplated in sub-regulation (9), the Minister responsible for mineral resources must approve for implementation, or not approve the revised financial provision.
- (11) If the holder does not submit the revised financial provision contemplated in sub-regulation (9) the existing approved financial provision shall lapse 45 calendar days after the lapsing of the 30 calendar day's period contemplated in sub-regulation (9).
- (12) Where a revised financial provision is not approved as contemplated in sub-regulations (7)(c) or (10), the Minister responsible for mineral resources must provide reasons for not approving such a revised financial provision.
- (13) Financial provision submitted in terms of regulations 53 and 54 of the Mineral and Petroleum Resources Development Regulations, 2004 and which is pending when these Regulations take effect, must despite the repeal of regulations 53 and 54 of the Mineral and Petroleum Resources Development Regulations, 2004 be dispensed with in terms of regulations 53 and 54 the Mineral and Petroleum Resources Development

Regulations, 2004 as if regulations 53 and 54 of the Mineral and Petroleum Resources Development Regulations, 2004 were not repealed.

- (14) Where an existing approved financial provision is under review in terms of the Mineral and Petroleum Resources Development Regulations, 2004 when these Regulations comes into operation, the existing approved financial provision must be reviewed as if regulations 53 and 54 of the Mineral and Petroleum Resources Development Regulations, 2004 are not repealed and may be approved as if the Mineral and Petroleum Resources Development Regulations, 2004 were not repealed.

#### **Offences**

15. A holder or permit holder commits an offence if that person contravenes or fails to comply with regulation 4, 5, 6, 7, 8, 9, 10, 11 or 12 of these Regulations.

#### **Penalties**

16. A holder or permit holder convicted of an offence in terms of regulation 15 of these Regulations is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding ten years, or to both such fine or such imprisonment.

#### **Short title and commencement**

17. These regulations are called the Financial Provisioning for the Rehabilitation and Management of Negative Environmental Impacts Associated with Prospecting, Exploration, Mining and the Production of a Mineral, 2014 and come into operation on the date of publication in the *Gazette*.



**APPENDIX 1****DEED OF TRUST**

Made and entered into by and between

\_\_\_\_\_  
(hereinafter referred to as the "Founder")

**AND**

\_\_\_\_\_  
(the name(s) of the Trustee(s))

**1. DEFINITIONS**

In this deed, the following expressions have the meaning respectively set opposite them unless it appears otherwise from the context:

- 1.1 "the Acts and Regulations" means all the relevant laws of the Republic of South Africa and the regulations thereunder, being *inter alia*:
  - 1.1.1 National Environmental Management Act No. 107 of 1998;
  - 1.1.2 Environmental Impact Assessment Regulations;
  - 1.1.3 Financial Provisioning for the Rehabilitation and Management of Negative Environmental Impacts Associated with Prospecting, Exploration, Mining and Production of a Mineral;
  - 1.1.4 Mineral and Petroleum Resources Development Act No. 28 of 2002;
  - 1.1.5 National Environmental Management: Air Quality Act No. 39 of 2004;
  - 1.1.6 National Environmental Management: Biodiversity Act No. 10 of 2004;
  - 1.1.7 National Environmental Management: Waste Act No. 59 of 2008;
  - 1.1.8 National Environmental Management: Protected Areas Act No. 57 of 2003;
  - 1.1.9 any applicable Land Use Planning Ordinance or similar instrument; and
  - 1.1.10 Companies Act No. 71 of 2008,  
  
including all amendments and/or replacements of any such legislation or subordinate legislation, and any other legislation and/or regulations which may be imposed from time to time to control the management of any or all the impacts of mining activities.
- 1.2 "the beneficiary" means \_\_\_\_\_ or any other such person as may be agreed to by the beneficiary and the Trustees with the prior written approval of the Minister responsible for mineral resources or, should any person which is a

beneficiary (i) commit an act which is or would, if such person were a natural person, be an act of insolvency (as defined in the Insolvency Act 1936), or (ii) be or become financially distressed (as defined in the Companies Act 71 of 2008) or (iii) be declared by a competent court to be insolvent (whether provisionally or finally), then with effect from the date of such event, the Department.

- 1.3 "the Commissioner" means the Commissioner for the South African Revenue Service as referred to in the Income Tax Act No 58 of 1962 as amended ("the IT Act").
- 1.4 "the Department" means the Department responsible for mineral resources or its successor from time to time.
- 1.5 "the Founder" means \_\_\_\_\_.
- 1.6 "the Minister" means the Minister of Mineral Resources or any person to whom the responsibility has been delegated or assigned pursuant to any law for ensuring that, within the Province(s) concerned, adequate financial provision is made for the fulfilment of the Statutory Obligations.
- 1.7 Minister "the Trust" means the \_\_\_\_\_ Rehabilitation Trust, a Trust created in terms of the Provisions of clause 3 hereof.
- 1.8 "mine operation" has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act No. 28 of 2002.
- 1.9 "Statutory Obligations" mean the obligations described in the regulations entitled "Financial Provisioning for the Rehabilitation and Management of Negative Environmental Impacts Associated with Prospecting, Exploration, Mining and Production of a Mineral, 2014" promulgated in terms of the National Environmental Management Act No. 107 of 1998 and as amended from time to time or any legislation or subordinate legislation which supplements, amends and/or replaces such regulations or deals with similar or related matters.
- 1.10 "the Trustees" means \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, who have agreed to be the first trustees of the \_\_\_\_\_ REHABILITATION TRUST.

## 2. RECORDAL

- 2.1 The beneficiary is, as at the date of this deed of trust, engaged in prospecting, exploration, mining or production of minerals on the site approved by the Minister responsible for mineral resources on the mining application and once issued, updated in line with the right or permit or any amendment thereto.
- 2.2 The beneficiary is legally obliged, at the time of and after the discontinuation of the operations on a mine or part of a mine, to carry out rehabilitation and closure operations to prevent and control pollution at its mining operations in terms of the Acts and Regulations and to bring the area back to an agreed environmental state and to bear the cost of such rehabilitation, prevention and control. The costs to be covered are set out in the IT Act and Regulations from time to time which, for the avoidance of doubt, exclude any costs which are required for implementing the annual rehabilitation

plan as approved by the Minister of mineral resources to be incurred on an ongoing basis during the life of the mine or part of the mine.

- 2.3 For the purpose of making provision for the discharge of the beneficiary's Statutory Obligations, the Founder wishes to establish the Trust to receive, hold and apply such amounts as may be contributed by the Founder and the beneficiary from time to time to provide for the cost of discharging the Statutory Obligations.
- 2.4 The Founder wishes to create a trust for the benefit of the beneficiary and for this purpose wishes to donate \_\_\_\_\_ to the Trustees of the Trust.

### 3. THE TRUST AND ITS OBJECTS

- 3.1 There is hereby created with the approval of the Commissioner a Trust called the \_\_\_\_\_ **REHABILITATION TRUST.**
- 3.2 The sole object of the Trust is to act as the financial provider in whole or part for expenditure which the beneficiary is required to undertake in order to comply with the Statutory Obligations.

### 4. DONATION

- 4.1 The Founder hereby irrevocably donates the sum of \_\_\_\_\_ to the Trustees in trust, who in their capacity as such, hereby accepts such donation for the purpose and subject to the conditions of this deed.
- 4.2 The donation made in terms of clause 4.1 hereof shall immediately vest in the Trustees but always subject to the terms of this deed.

### 5. ADMINISTRATION OF THE TRUST

- 5.1 The Trustees shall administer the Trust.
- 5.2 The Trustees shall not receive any remuneration from the Trust for their services, unless the Trustee is a professional fiduciary services company, in which event it may be paid its normal commercial rates for the provision of trustee services.
- 5.3 There shall at all times be not less than two or more than \_\_\_\_\_ Trustees, who shall be natural persons unless the Trustee is a professional fiduciary services company, in which event such company may be the sole corporate Trustee. If the Trustees are natural persons, no more than one of them may, subject to clause 6.3, be in the employ of the beneficiary or any related or interrelated (as defined in the Companies Act No. 71 of 2008) person. The Commissioner in consultation with the Minister responsible for mineral resources may upon application by the Trustees grant approval for more than one natural person who is an employee of the beneficiary any related or interrelated (as defined in the Companies Act No. 71 of 2008) person to be appointed as a Trustee.
- 5.4 No person may be a Trustee if he or she would not be eligible to be a director of a company under the Companies Act No. 71 of 2008, or has been convicted of any offence involving dishonesty.

- 5.5 The Trustees shall hold office until they resign or are deemed to have vacated their offices in terms of clause 6.
- 5.6 The Trustees shall control and administer the Trust, and shall perform and discharge the duties incumbent on them hereunder.

## **6. RESIGNATION OF TRUSTEES**

- 6.1 Should a Trustee resign then the remaining Trustees shall immediately appoint a Trustee to fill that vacancy. Should there be a sole corporate Trustee and should such sole Trustee wish to resign, it may do so on one month's notice in writing to the remaining Trustees, the Commissioner and the Minister responsible for mineral resources. In such event the Founder shall appoint a new corporate Trustee, or two or more natural persons as Trustees, by no later than the date of resignation of the sole Trustee.
- 6.2 A Trustee may resign at any time on giving one month's notice in writing to the remaining Trustees of his or her intention to do so and shall in any case be deemed to have vacated his or her office if he or she is no longer employed by the beneficiary or any of its subsidiaries.
- 6.3 Should (i) the remaining Trustee/s not appoint a new Trustee to replace one who has resigned or is deemed to have vacated his or her office within one month of such resignation or vacation being effective, or (ii) the Founder not appoint a new Trustee or Trustees to replace a corporate Trustee who has resigned within one month of such resignation being effective, then in either such case the Minister responsible for mineral resources shall be entitled to appoint one or more Trustees hereunder.

## **7. CHAIRMAN AND VOTING**

- 7.1 The Trustees shall from time to time nominate one of their number to be Chairman of the Trust and he shall continue to be Chairman until he resigns from that office or ceases to be a Trustee.
- 7.2 Should the Chairman be absent at any meeting of the Trustees, the Trustees present shall appoint one of their number as Chairman to preside at that meeting.
- 7.3 Questions arising at meeting of Trustees shall be decided by a simple majority of votes each Trustee personally present having one vote, and in the case of equality of votes the Chairman of such meeting shall have a casting vote.
- 7.4 The provisions of this clause 7 shall be held in abeyance if there is a sole corporate Trustee.

## **8. SECRETARY**

The Trustees shall appoint a Secretary (which may be a company), who shall not be remunerated with monies from the Trust. The Secretary shall, whenever required to do so by any one Trustee, convene a meeting of the Trustees and be responsible for the minutes to be kept of all meetings and decisions of the Trustees.

## **9. MEETINGS AND QUORUM**

- 9.1 The Trustees shall meet from time to time to transact the business of the Trust and the necessary quorum for any such meeting shall be two Trustees personally present. Reasonable notice of every such meeting shall be given to each Trustee and all meetings of the Trustees shall, unless otherwise decided by the Trustees, be held in \_\_\_\_\_. Meetings may be held by telephone or any other electronic medium, provided that each Trustee is able properly to participate in the proceedings using such medium.
- 9.2 A resolution signed by all the Trustees shall have the same effect as if it had been passed at a duly constituted meeting.
- 9.3 The provisions of this clause 9 shall be held in abeyance if there is a sole corporate Trustee, which conduct the business of the Trust as it deems may fit having regard to the requirements of this deed and the Acts and Regulations.

## **10. TRUSTEES' LIABILITY**

- 10.1 Subject to applicable law, including but not limited to the Trust Property Control Act No. 57 of 1988 (or any amendment or replacement thereof) the Trustees shall not be answerable or accountable for any loss arising out of their administration of the Trust, or in respect of any depreciation of any investment of the Trust, unless such loss or depreciation shall occur through the wilful misconduct or gross negligence of any Trustee(s), in which event the Trustee(s) concerned, and not all the Trustees, shall be jointly and severally liable for any such loss.
- 10.2 The Trustees shall have no responsibility or liability for the efficacy of the measures taken by the beneficiary to fulfil the Statutory Obligations or for the sufficiency of contributions and amounts paid to the Trust in terms of clause 14.
- 10.3 The beneficiary hereby indemnifies the Trustees against any claims made against the Trustees arising from the loss or depreciation referred to in this clause 10 in respect of its monies (other than as a result of wilful misconduct or gross negligence on the part of the Trustees) or arising as a result of the measures taken the beneficiary to fulfil the Statutory Obligations proving to be ineffective and/or the contributions and/or amounts obtained from it proving to be insufficient.

## **11. SECURITY BY THE TRUSTEES**

The Trustees shall not be required to lodge security with the Master of the High Court or any other official or authority in terms of the Trust Property Control Act No. 57 of 1988 or any other law requiring that security be lodged with any official or authority for the due performance of their duties hereunder.

## **12. TRUSTEES' POWERS**

- 12.1 The Trustees shall have general control over the funds of the Trust and shall strive to attain the sole object which the Trust is established.
- 12.2 The Trustees shall have plenary powers to enable them to achieve the sole object of the Trust.

- 12.3 The Trustees shall receive, hold, and apply the donation in clause 4 and such amounts as may be contributed to the Trust in terms of this deed, together with the net income thereon. Except as may be otherwise provided herein, the Trustees shall not distribute any of the Trust's profits or gains to any person and shall use the funds solely for the object for which the Trust has been established.
- 12.4 The Trustees in their personal capacity shall not engage in any trade, undertaking or business of the Trust, nor shall any of them participate in any of the affairs of the Trust, or provide any financial assistance or services or facilities other than is required to fulfil their role as Trustee.
- 12.5 The management of the affairs and all the powers of the Trust shall vest in the Trustees and without derogating from the generality of the foregoing, the Trustees shall have full legal power:
- 12.5.1 to deposit with any bank regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990) and/or to invest, realise and re-invest the contributions made to the Trust and the net income accrued thereon on such terms and at such rates of interest as the Trustees shall decide provided that they shall be limited to making investments which are capital guaranteed and are made in:
- 12.5.1.1 financial instruments issued by any—
- 12.5.1.1.1 collective investment scheme as regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);
- 12.5.1.1.2 long-term insurer as regulated in terms of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998);
- 12.5.1.1.3 bank as regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990); or
- 12.5.1.1.4 mutual bank as regulated in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993); and/or
- 12.5.1.2 financial instruments issued by any sphere of government in the Republic which are fully guaranteed out of the National Revenue Fund;
- 12.5.2 to appropriate firstly the net income defined in 13.6 and secondly the contributions and/or amounts paid in terms of clause 14 for the measures taken for compliance with the Statutory Obligations of the beneficiary;
- 12.5.3 to institute any legal action for the recovery of monies owing to the Trust and to prosecute, compromise, settle or withdraw any such action;
- 12.5.4 to execute against the corporeal, incorporeal, movable and immovable property of any of the Trust's judgement debtors;
- 12.5.5 to execute all documents for and on behalf of the Trust and in this regard to delegate their authority so to execute to two of the Trustees or to one of the Trustees and the Secretary of the Trust; and
- 12.5.6 generally to perform all acts connected with any of the Trust's affairs,

provided that the Trustees shall not be entitled on behalf of the Trust to (i) incur any indebtedness of any nature (including through the use of any negative mark to market position in relation to any derivative instrument) save for non-interest bearing trade credit incurred in the ordinary course of the Trust's business or (ii) encumber the Trust assets or any of them in any manner whatsoever.

### **13. TRUST'S BOOKS OF ACCOUNT AND ACCOUNTING PROCEDURES**

- 13.1 The Trustees shall cause proper books of account to be kept for the Trust and shall appoint independent auditors to report on the financial statements for each financial year of the Trust.
- 13.2 The financial statements of the Trust for each financial year (which shall be reckoned from 1 March to 28 February) shall be forwarded by the Trustees to the beneficiary and to the Commissioner and the Minister within six calendar months after the end of each financial year of the Trust.
- 13.3 The Trustees shall open a banking account in the name of the Trust, which shall be operated upon by the joint signatures of one of the Trustees and the Secretary, or another duly appointed authorised joint signatory.
- 13.4 All documents required to be signed or executed on behalf of the Trust shall be so signed or executed by the person or persons authorised thereto by resolution of the Trustees.
- 13.5 All costs charges and expenses of administering the Trust shall be chargeable to and be borne by the Trust. Such costs, charges and expenses incurred in any financial year shall be paid or provided for out of the income of the Trust in that financial year. The Founder hereby undertakes to pay or procure the payment of any such costs, charges and expenses which cannot be borne out of the income of the Trust. The Founder shall have no claim against the Trust for any such costs, charges and expenses so paid.
- 13.6 The balance, if any, of the gross income remaining in any financial year of the Trust after deducting such costs, charges and expenses shall be net income for the financial year.
- 13.7 Such net income shall form part of the funds of the Trust and subject to this deed.
- 13.8 The Trustees shall not be permitted to distribute, except as may otherwise be provided herein, any of the funds of the Trust to any person and shall utilise the Trust solely for investment in accordance with clause 12.5.1 and the object for which the Trust has been established.
- 13.9 No surplus funds will be refunded to the Founder or any other person (natural or juristic) but will be dealt with in accordance with clause 17.2.

### **14. COST OF COMPLIANCE WITH THE STATUTORY OBLIGATIONS AND CONTRIBUTIONS TO THE TRUST**

- 14.1 On an annual basis, the contribution to be made to the Trust (if any) shall be calculated in accordance with the requirements of the Statutory Obligations.

- 14.2 The Founder shall, or shall procure that the beneficiary shall, before the end of its financial year concerned pay into the bank account of the Trust the necessary contribution to comply with the financial provision approved by the Minister of mineral resources towards the costs of implementing the measures so approved. The undertakings by the Founder in this clause 14 shall be stipulations in favour of the Minister of mineral resources, the benefits of which may be accepted by him/her in any manner and at any time.

## **15. COMPLIANCE WITH THE STATUTORY OBLIGATIONS**

- 15.1 The Trustees undertake to ensure that funds of the Trust shall be used only to allow the beneficiary properly to fulfil the Statutory Obligations. The funds will be placed at the disposal of such beneficiary to carry out the Statutory Obligations as and when so required. This undertaking shall be a stipulation in favour of the Minister of mineral resources, the benefits of which may be accepted by him/her in any manner and at any time.
- 15.2 In fulfilling the before mentioned undertaking the amount made so available by the Trustees will be limited to funds held by the Trust.
- 15.3 Any provision of funds by the Trustees must be approved in advance in writing by the Minister responsible for mineral resources. Should there be a balance standing to the credit of the beneficiary after all the measures required to be taken in order to comply with its Statutory Obligations have been executed to the satisfaction of the Minister, the said balance shall be paid to a body referred to in 18 or can be deferred against the costs of the activities identified in the environmental risk report for the remediation and management of latent or residual environmental impacts which may become known in the future, including the pumping and treatment of polluted mine water.

## **16. CESSATION OF MINING ACTIVITIES AND SHORTFALL**

- 16.1 Should the beneficiary decide to terminate its mining operations (other than a temporary cessation of such operations) at any mine or part of any mine and/or should the beneficiary be placed into liquidation (whether provisional or final) prior to it having complied with all of the Statutory Obligations, which it may have, the Founder shall, or procure that the beneficiary shall, not earlier than three months and not later than one month prior to taking any steps for the winding up of such mining operations and within one month of the beneficiary having been placed in liquidation (whether provisional or final), have final estimates prepared of the probable cost of compliance with such outstanding Statutory Obligations, including the cost should a third party be required to effect the measures required to meet the Statutory Obligations including providing for the remediation and management of latent or residual environmental impacts which may become known in the future, including the pumping and treatment of polluted mine water, which shall be certified and approved as provided in clause 14.1.
- 16.2 On or after the date of termination of any relevant mining activities or any liquidation referred to in clause 16.1, should the total amount of the final estimates as so approved exceed the total amounts standing to the credit of the beneficiary's account, the Founder shall forthwith pay to the Trust the shortfall.



- 16.3 The undertakings in this clause 16 are stipulations in favour of the Minister responsible for mineral resources, the benefits of which may be accepted by him/her in any manner and at any time.

## 17. TERMINATION OF THE TRUST

- 17.1 The Trust may only be terminated after all the beneficiary's Statutory Obligations in respect of all its mining operations at any time have been met to the satisfaction of the Minister of mineral resources.
- 17.2 Should any amount and/or other assets remain after all the Statutory Obligations in respect of all the beneficiary's mining operations at any time have been met to the satisfaction of the Minister of mineral resources including remediation of latent or residual environmental impacts which may become known in the future, including the pumping and treatment of polluted mine water, those amounts and other assets should be transferred to a company, society, or other association of persons or a trust which fulfils the requirements of section 10(1)(cH) of the IT Act, provided such transfer has been approved by the Commissioner.

## 18. VARIATION OF THIS DEED

The provisions of this deed may from time to time be amended by a resolution of the Trustees only with the prior written approval of each of the beneficiary, the Minister of mineral resources and the Commissioner.

THUS done and signed in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ by the Founder.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

THUS done and signed in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ by the Trustee.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

THUS done and signed in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ by the Trustee.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

THUS done and signed in \_\_\_\_\_ on the \_\_\_\_\_ day of  
\_\_\_\_\_ by the Trustee.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

THUS done and signed in \_\_\_\_\_ on the \_\_\_\_\_ day of  
\_\_\_\_\_ by the Trustee.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

THUS done and signed in \_\_\_\_\_ on the \_\_\_\_\_ day of  
\_\_\_\_\_ by the Trustee.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

## APPENDIX 2

## FINANCIAL GUARANTEE

## (BANK OR GUARANTOR'S LETTER HEAD)

MINISTER RESPONSIBLE FOR MINERAL RESOURCES (or his/her successor)

.....

.....

.....

.....

Sir

**DEMAND GUARANTEE FOR THE COMPLIANCE WITH THE STATUTORY OBLIGATION  
RELATED TO DETERMINING AND MAKING FINANCIAL PROVISION FOR THE  
MANAGEMENT OF NEGATIVE ENVIRONMENTAL IMPACTS FOR PROSPECTING,  
EXPLORATION, MINING OR PRODUCTION OPERATIONS**

1. In relation to the responsibility, in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended and/or replaced from time to time, ("the Act"), of..... (the "holder") is required to determine and make the prescribed financial provision for the management of negative environmental impacts from prospecting, exploration, mining or production operations to the satisfaction of the Minister responsible for mineral resources in accordance with the provisions of the regulations entitled "Financial Provisioning for the Rehabilitation or Management of Negative Environmental Impacts Associated with Prospecting, Exploration, Mining and Production of a Mineral, 2014", promulgated in terms of the Act, or any legislation or subordinate legislation which supplements, amends and/or replaces such regulations or deals with similar or related matters for the mine known as ..... and situated at (give full description of property) ..... or any applicable part thereof (the "Mine"), we, as guarantor ( "we", "us" or the "Guarantor") confirm that the amount of R..... (.....) (the "Guaranteed Sum") is available to you for the purpose of executing the prescribed financial provision.
2. The Guarantor hereby irrevocably undertakes, as a principal obligation, to pay to you the Guaranteed Sum by no later than 2 business days after receipt of a written claim from you (or made on your behalf) to do so, which claim:
  - 2.1 must state that the holder:
    - 2.1.1 has failed to execute the financial provision in accordance with its terms; and/or

- 2.1.2 has failed to commence execution of the approved final rehabilitation, decommissioning and mine closure plan or the environmental risk assessment report within 10 business days of the earlier of (i) the date on which such commencement is required by law or (ii) the date of written notice to the holder requiring such commencement, in circumstances in which mining operation, prospecting operation or production operation (as the case may be) have ceased; and/or
  - 2.1.3 has commenced execution of the approved final rehabilitation, decommissioning and mine closure plan and the environmental risk assessment report but has failed to make adequate progress with such approved final rehabilitation, decommissioning and mine closure plan or environmental risk assessment report at any time prior to its completion in accordance with its terms; and/or
  - 2.1.4 has become subject to an order of court placing him/her/it in or under sequestration, liquidation or bankruptcy (in any case whether voluntary or compulsory, provisional or final), or has been placed under supervision for business rescue proceedings (whether pursuant to a board resolution or a court order) or any analogous order is granted or resolution taken in any jurisdiction in relation to the holder; or
- 2.2 may be made without any statement required under clause 2.1 if the Guarantor gives written notice to you in terms of clause 5 of this guarantee.

A claim under this guarantee may be instituted by you at any stage commencing from the date of signature of this guarantee.

3. The Guaranteed Sum may be held and utilised by you on the condition that you, after having complied with all the provisions of the approved final rehabilitation, decommissioning and mine closure plan and environmental risk assessment report, will within a reasonable period thereafter give account to the guarantor (in reasonable detail) of how the Guaranteed Sum was utilised and repay any portion of the Guaranteed Sum which was not so utilised to the Guarantor.
4. This guarantee is not transferable, and –
- (a) must be returned to the Guarantor when giving account to the Guarantor in terms of clause 3 above or, if the original guarantee has been lost, must be accompanied by a statement that the applicable document cannot be located and that you indemnify the Guarantor against any direct loss that it may suffer (other than as a result of its own negligent or wilful act or omission) as a direct result of such original document not being returned to it;
  - (b) shall lapse on the granting of a closure certificate in terms of the Mineral and Petroleum Resources Development Act, 2002 in respect of the whole of the Mine; and
  - (c) shall not be construed as placing any other responsibility on the Guarantor other than the paying of the Guaranteed Sum.

5. The Guarantor reserves the right to withdraw from this guarantee after having given you and the Minister responsible for environmental affairs at least six months' written notice in advance of his/her/its intention to do so.

Yours faithfully

.....

(SIGNATURE)

(SIGNATURE)

.....

(NAME)

(NAME)

.....

(DESIGNATION)

(DESIGNATION)

Who hereby warrants his/her authority

Who hereby warrants his/her authority

ADDRESS: .....

.....

.....

.....

DATE: .....

- PLEASE NOTE:**
- (1) No amendments and/or additions to the wording of this guarantee will be accepted.
  - (2) The address of the addressee of this guarantee must be stated clearly.
  - (3) This guarantee must be returned to:

.....

.....

**APPENDIX 3****MINIMUM CONTENT OF AN ANNUAL REHABILITATION PLAN****1. Objective of the annual rehabilitation plan**

The annual rehabilitation plan will form a component of the environmental management programme and will be subjected the same requirements of the environmental management programme with regards opportunities for stakeholder review and comment.

The objective of the annual rehabilitation plan is to—

- (a) Review concurrent rehabilitation activities already implemented;
- (b) Establish rehabilitation goals and outcomes for the forthcoming 12 months; and
- (c) Establish a plan, schedule and budget for the forthcoming 12 months.

**2. Content of the annual rehabilitation plan**

The annual rehabilitation plan will be relevant for a period of one year after which the plan will be updated by the holder to reflect progress relating to rehabilitation activities in the preceding 12 months and to establish a plan, schedule and budget for the forthcoming 12 months. The annual rehabilitation plan must contain information that defines concurrent rehabilitation activities for the forthcoming 12 months and how these relate to the operations closure vision and what closure objectives and criteria are being achieved through the implementation of the plan. The plan must be prepared in a manner that is measurable and auditable and must include—

- (a) Details of the—
  - (i) team that prepared the rehabilitation plan;
  - (ii) professional registrations and experience of the team;
  - (iii) timeframes of implementation of the current, and review of the previous rehabilitation activities;
- (b) The pertinent environmental and project context relating directly to planned annual rehabilitation activity;
- (c) Details of the annual rehabilitation activities—
  - (i) if no areas are available for annual rehabilitation concurrent with mining, this must be stipulated and motivated;
  - (ii) where areas are available, annual rehabilitation activities must be related to previous disturbance or expected planned disturbance, as per the mine works programme, in the period under consideration. This must take the form of a table and must indicate but not necessarily be limited to:
    - (aa) nature or type of activity and associated infrastructure;

- (bb) planned remaining life of the activity under consideration;
  - (cc) area already disturbed or planned to be disturbed in the period of review;
  - (dd) percentage of the already disturbed or planned to be disturbed area available for concurrent rehabilitation activities;
  - (ee) percentage of the already disturbed or planned to be disturbed available area on which concurrent rehabilitation can be undertaken;
  - (ff) notes to indicate why total available or planned to be available area differs from area already disturbed or planned to be disturbed;
  - (gg) notes to indicate why concurrent rehabilitation will not be undertaken on the full available or planned to be available area;
  - (hh) details of rehabilitation activity planned on this area for the period of review;
  - (ii) the pertinent closure objectives and performance targets that will be addressed in the forthcoming year;
  - (jj) description of the relevant closure design criteria adopted in the annual rehabilitation activities and the expected final land use once all rehabilitation activities are complete for the activity or aspect; and
  - (iii) a site plan must be provided that indicates at least the area disturbed, available for rehabilitation and the area to be rehabilitated per aspect or activity during the period of the review;
- (d) Review of the previous year's annual rehabilitation activities—
- (i) comparison of activities planned in the previous year's annual rehabilitation plan to actual rehabilitation implemented. This should be tabulated and as a minimum contain—
    - (aa) area planned to be rehabilitated during the plan under review;
    - (bb) actual area rehabilitated;
    - (cc) if the variance between planned and actual exceeds 15%, motivation as to why the full area was not rehabilitated;
- (e) Costing—
- (i) explanation of the closure cost methodology;
  - (ii) auditable calculations of costs per activity or infrastructure;
  - (iii) cost assumptions; and

- (iv) monitoring and maintenance costs likely to be incurred both during the period of the annual rehabilitation plan and those that will extend past the period of the closure plan. The monitoring and maintenance costs included in previous annual rehabilitation plan need to be accumulated into subsequent versions of the annual rehabilitation plan and until the monitoring and maintenance obligation is discharged.



## APPENDIX 4

### MINIMUM CONTENT OF A FINAL REHABILITATION, DECOMMISSIONING AND MINE CLOSURE PLAN

1. The final rehabilitation, decommissioning and closure plan will form a component of the environmental management programme and will be subjected the same requirements of the environmental management programme with regards opportunities for stakeholder review and comment.

2. **Objective of the final rehabilitation, decommissioning and closure plan**

The objective of the final rehabilitation, decommissioning and closure plan is to—

- (a) Provide the applicant's vision, objectives and criteria for rehabilitation, decommissioning and closure of the project;
- (b) Outline the design principles for closure;
- (c) Explain the risk assessment approach and outcomes and link closure activities to risk mitigation;
- (d) Detail the closure actions that clearly indicate the measures that will be taken to mitigate and/or manage identified risks and describes the nature of residual risks that will need to be monitored and managed post closure;
- (e) Commits a schedule, budget, roles and responsibilities for rehabilitation, decommissioning and closure of each relevant activity or item of infrastructure;
- (f) Identify knowledge gaps and how these will be addressed and filled;
- (g) Detail the full closure costs for the life of project at increasing levels of accuracy as the project develops and approaches closure;
- (h) Outlines monitoring, auditing and reporting requirements; and
- (i) Be measureable and auditable.

3. **Content of the final rehabilitation, decommissioning and closure plan**

The final rehabilitation, decommissioning and closure plan must contain information that is necessary for the definition of the closure vision, objectives and design and relinquishment criteria, what infrastructure and activities will ultimately be decommissioned, closed, removed and remediated and the risk drivers determining actions and how the closure actions will be implemented to achieve closure relinquishment criteria and the monitoring auditing and reporting requirements. The final rehabilitation, decommissioning and closure plan must be prepared in a manner that is measurable and auditable and must include—

- (a) Details of—
  - (i) the team that prepared the plan;

- (ii) the professional registrations and experience of the preparers;
- (b) The context of the project including—
  - (i) material project description information and issues that have guided the development of the plan;
  - (ii) an overview of environmental and social context that may influence closure activities or be influenced by closure activities;
  - (iii) stakeholder issues and comments that have informed the plan;
  - (iv) the mine plan and schedule for the full approved life of mine, and must include—
    - (aa) appropriate description of the mine plan;
    - (bb) drawings and figures to indicate how the mine develops;
    - (cc) what areas are disturbed; and
    - (dd) how infrastructure and structures (including ponds, residue stockpiles etc.) develops during the life of the mine;
- (c) Risk assessment leading to the most appropriate closure strategy including—
  - (i) description of the risk assessment methodology including risk identification and quantification. This to be undertaken for all areas of infrastructure or activity or aspects for which an operation has a responsibility to mitigate an impact or risk at closure;
  - (ii) identification of conceptual closure strategies to mitigate the impacts and risks;
  - (iii) a reassessment of the risks to determine whether after the implementation of the closure strategy the residual risk is acceptable to the mining operation and stakeholder; and
  - (iv) explanation of changes to the risk assessment results as applicable in annual updates to the plan;
- (d) Design principles including—
  - (i) legal and governance framework and interpretation of these requirements for the closure design principles;
  - (ii) closure vision and objectives. The objectives must reflect the local environmental and socio-economic context and reflect regulatory and corporate requirements and stakeholder expectations;
  - (iii) description and evaluation of alternative closure and post closure options where these exist that are practicable within the socioeconomic and environmental opportunities and constraints in which the operation is located;

- (iv) motivation for the preferred closure action within the context of the risks and impacts that are being mitigated;
  - (v) definition and motivation of the closure and post closure period taking cognisance of the probable need to implement post closure monitoring and maintenance for a period sufficient to demonstrate that relinquishment criteria have been achieved;
  - (vi) details associated with any on-going research on closure options;
  - (vii) detailed description of the assumptions made to develop closure actions in the absence of detailed knowledge on site conditions, potential impacts, material availability, stakeholder requirements and other factors for which information is lacking;
- (e) Proposed final land use—
  - (i) descriptions of final land use for overall project and per infrastructure or activity and a description of the methodology used to identify final land use including the requirements of the operations stakeholders;
  - (ii) map of proposed final land use;
- (f) Closure actions—
  - (i) develop and document a description of specific technical solutions related to infrastructure and facilities for the preferred closure option or options. These must include all areas or infrastructure or activity or aspects both within the mine lease area and off of the mine lease area associated with mining for which the mine has the responsibility to implement closure actions;
  - (ii) develop and maintain a list and assessment of threats and opportunities and any uncertainties associated with the preferred closure option. This list will be used to identify and define any additional work that is needed to reduce the level of uncertainty;
- (g) Schedule for rehabilitation, decommissioning and closure—
  - (i) linking to mine works programme (if greenfields) or to the current mine plan (if brownfields);
  - (ii) assumptions and schedule drivers;
  - (iii) spatial map of schedule showing planned spatial progression throughout life of mine;
- (h) Indicate the organisational capacity that will be put in place to implement the plan including—
  - (i) organisational structure as it pertains to the plan;
  - (ii) responsibilities;

- (iii) training and capacity building that may be required to build closure competence;
- (i) Gaps in plan must be indicated and an auditable action plan and schedule to address the gaps must be provided;
- (j) Relinquishment criteria for each activity or infrastructure in relation to environmental aspects must be provided with auditable indicators;
- (k) Closure cost estimation procedure must ensure that identified rehabilitation, decommissioning, closure and post-closure costs, whether on-going or once-off, are realistically estimated and incorporated into the estimate—
  - (i) cost estimates for operations, or components of operations that are more than 30 years from closure will be prepared as conceptual estimates with an accuracy of  $\pm 50$  per cent. Cost estimates will have an accuracy of  $\pm 70$  per cent for operations, or components of operations, 30 or less years (but more than ten years) from closure and  $\pm 80$  per cent for operations, or components of operations ten or less years (but more than five years) from closure. Operations with 5 or less years will have an accuracy of  $\pm 90$  per cent. Motivation must be provided to indicate the accuracy in the reported number and as accuracy improves, what actions resulted in an improvement in accuracy;
  - (ii) the closure cost estimation must include the following:
    - (aa) explanation of the closure cost methodology;
    - (bb) auditable calculations of costs per activity or infrastructure;
    - (cc) cost assumptions;
  - (iii) the closure cost estimate must be updated annually during the operation's life to reflect known developments, including changes from the annual review of the closure strategy assumptions and inputs, scope changes, the effect of a further year's inflation, new regulatory requirements and any other material developments;
- (l) Monitoring, auditing and reporting must be outlined and must relate to the risk assessment, legal requirements and knowledge gaps as a minimum and will include—
  - (i) a schedule outlining internal, external and legislated audits of the plan for the year or three year period including—
    - (aa) person responsible for undertaking the audit(s);
    - (bb) planned date of audit and frequency of audit;
    - (cc) explanation of approach that will be taken to address and close out audit results and schedule;

- (ii) a schedule of reporting requirements will be providing outlining internal and external reporting including disclosure of updates of the plan to stakeholders;
- (iii) a monitoring plan will be provided outlining—
  - (aa) parameters to be monitored, frequency of monitoring and period of monitoring;
  - (bb) explanation of approach that will be taken to analyse monitoring results and how these results well be used to inform decision making.

## APPENDIX 5

### MINIMUM CONTENT OF AN ENVIRONMENTAL RISK ASSESSMENT

1. The environmental risk assessment will form a component of the environmental management programme and will be subjected the same requirements of the environmental management programme with regards opportunities for stakeholder review and comment.

#### 2. Objective of the environmental risk assessment

The objective of the environmental risk assessment is to—

- (a) Identify and quantify the potential latent environmental risks;
- (b) Detail approach to managing the risks;
- (c) Quantify the potential liabilities associated with the management of the risks;
- (d) Outline monitoring, auditing and reporting requirements;
- (e) Be measureable and auditable.

#### 3. Content of the environmental risk assessment

The environmental risk assessment must contain information that is necessary to determine the quantum of the potential financial liability associated with the management of latent environmental liabilities post closure, once the initial relinquishment criteria have been achieved. The plan must be prepared in a manner that is measurable and auditable and must include—

- (a) Details of—
  - (i) The team that prepared the plan;
  - (ii) The professional registrations and experience of the preparers;
- (b) Details of the assessment process used to identify and quantify the latent risks including—
  - (i) description of the risk assessment methodology including risk identification and quantification;
  - (ii) substantiation as to why each risk is latent including why the risk was not or could not be mitigated during concurrent rehabilitation or during the implementation of the final rehabilitation, decommission and closure plan;
  - (iii) detailed description of the drivers that could result in the manifestation of the risks. This is to be presented within the context of closure actions already having been implemented during the execution of concurrent rehabilitation or during the implementation of the final rehabilitation, decommission and closure plan;

- (iv) description as to the expected timeframe in which the risk is likely to manifest, typically as expected years after closure, and the duration of the impact. Motivation must be provided to support these timeframes;
  - (v) detailed description of the triggers which can be used to identify that the risk is imminent or has manifest;
  - (vi) results of the risk assessment;
  - (vii) explanation of changes to the risk assessment results as applicable in annual updates to the plan;
- (c) Management activities including—
- (i) an assessment of alternatives to mitigate or manage the impacts once the risk has become manifest. This is to focus on practicality as well as cost of the implementation;
  - (ii) motivation as to why the selected alternative is the appropriate approach to mitigating the impact;
  - (iii) detailed description of how the alternative will be implemented;
- (d) Costing—
- (i) the cost estimation must include the following:
    - (aa) explanation of the closure cost methodology;
    - (bb) auditable calculations of costs per activity or infrastructure;
    - (cc) cost assumptions;
    - (dd) monitoring costs post closure to determine whether the risk is imminent or has manifest are to be included in the assessment as are monitoring costs likely to be incurred during the implementation of the strategy to manage or mitigate the impacts once the risk has become manifest;
  - (ii) where appropriate a differentiation should be made between capital, operating, replacement and maintenance costs;
  - (iii) all costs to be calculated using the current value of money and no discounting or net present value calculations to be used in the determination of the quantum of the liability;
  - (iv) cost estimates for operations, or components of operations that are more than 30 years from closure will be prepared as conceptual estimates within an accuracy of  $\pm 50$  per cent. Cost estimates will have an accuracy of  $\pm 70$  per cent for operations, or components of operations, 30 or less years (but more than ten years) from closure and  $\pm 80$  per cent for operations, or components of operations ten or less years (but more than five years) from closure.

Operations with 5 or less years will have an accuracy of  $\pm 90$  per cent. Motivation must be provided to indicate the accuracy in the reported number and as accuracy improves, what actions resulted in an improvement in accuracy;

- (e) Monitoring, auditing and reporting must be outlined and must include requirements prior to the manifestation of the risk and impacts as well as those once the impacts resulting from the manifestation of the risk are realised.



**APPENDIX 6****CARE AND MAINTENANCE PLAN**

The content of a care and maintenance plan must include—

- (a) Details of—
  - (i) the person who prepared the care and maintenance plan; and
  - (ii) the expertise of that person to prepare care and maintenance plan.
  - (iii) the persons who will be responsible for the implementation of the care and maintenance plan; and
  - (iv) timelines within which the measures contemplated in care and maintenance plan must be implemented;
- (b) An environmental audit of the site;
- (c) Details of the results of the environmental audit and details of identified residual and latent impacts;
- (d) Care and maintenance program detailing management of environmental risks associated with mining activities and its implementation thereof;
- (e) Appropriate detail on closure performance monitoring and maintenance framework during progressive rehabilitation and post closure, including the methodology, quality control system and remedial strategy;
- (f) Care of idle infrastructure and machinery;
- (g) Emergency response action plan;
- (h) Details of the proposed care and maintenance cost for monitoring program;
- (i) A sketch plan drawn on an appropriate scale describing the final and future land use proposal and arrangements for the site;
- (j) Document the legal obligations and notifications;
- (k) A record of all notices, registers, meetings and comments of the interested and affected parties consulted;
- (l) Training provided to the people implementing the care and maintenance programme; and
- (m) Health and safety management plan.













**NOTICE – CHANGE OF TELEPHONE NUMBERS: GOVERNMENT PRINTING WORKS**

As the mandated government security printer, providing world class security products and services, Government Printing Works has adopted some of the highly innovative technologies to best serve its customers and stakeholders. In line with this task, Government Printing Works has implemented a new telephony system to ensure most effective communication and accessibility. As a result of this development, our telephone numbers will change with effect from 3 February 2014, starting with the Pretoria offices.

The new numbers are as follows:

- Switchboard : 012 748 6001/6002
- Advertising : 012 748 6205/6206/6207/6208/6209/6210/6211/6212
- Publications Enquiries : 012 748 6052/6053/6058 [GeneralEnquiries@gpw.gov.za](mailto:GeneralEnquiries@gpw.gov.za)
  - Maps : 012 748 6061/6065 [BookShop@gpw.gov.za](mailto:BookShop@gpw.gov.za)
  - Debtors : 012 748 6060/6056/6064 [PublicationsDebtors@gpw.gov.za](mailto:PublicationsDebtors@gpw.gov.za)
  - Subscription : 012 748 6054/6055/6057 [Subscriptions@gpw.gov.za](mailto:Subscriptions@gpw.gov.za)
- SCM : 012 748 6380/6373/6218
- Debtors : 012 748 6236/6242
- Creditors : 012 748 6246/6274

Please consult our website at [www.gpwonline.co.za](http://www.gpwonline.co.za) for more contact details.

The numbers for our provincial offices in Polokwane, East London and Mmabatho will not change at this stage.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001

Publications: Tel: (012) 748 6052, 748 6053, 748 6058

Advertisements: Tel: (012) 748 6205, 748 6208, 748 6209, 748 6210, 748 6211

Subscriptions: Tel: (012) 748 6054, 748 6055, 748 6057

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001

Publikasies: Tel: (012) 748 6052, 748 6053, 748 6058

Advertensies: Tel: (012) 748 6205, 748 6208, 748 6209, 748 6210, 748 6211

Subskripsies: Tel: (012) 748 6054, 748 6055, 748 6057